

MT LEGISLATIVE HISTORY

Chapter 9 1979

Bill H S 63

Original bill & hist. C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Jan 23 C

Hearing Date(s) Jan 10 C

Jan 24 C

Jan 11 C

 C

 C

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Date Out Jan 24 C

Jan 11 C

Did this bill originate in an interim committee? Yes No

Committee

Report

CHAPTER 12. 9

SENATE BILL NO. 63

INTRODUCED BY ANDERSON

BY REQUEST OF THE COMMISSIONER OF INSURANCE

IN THE SENATE

January 5, 1979	Introduced and referred to Committee on Judiciary. On Motion Senator Anderson was added as author to the Pre-Filed Bill.
January 11, 1979	Committee recommend bill do pass. Report adopted.
January 12, 1979	Printed and placed on members' desks.
January 13, 1979	On motion rules suspended. Bill referred to Second Reading for consideration this day. Second Reading, do pass.
January 15, 1979	Considered correctly engrossed.
January 16, 1979	Third Reading passed. Transmitted to Second House.

IN THE HOUSE

January 17, 1979	Introduced and referred to Committee on Judiciary.
January 25, 1979	Committee recommend bill be concurred in. Report adopted.
January 26, 1979	Second Reading, concurred in.
January 27, 1979	Third Reading, concurred in.

IN THE SENATE

January 29, 1979

Returned from Second House.
Sent to enrolling.

Report correctly enrolled.

1 SENATE BILL NO. 63
2 INTRODUCED BY _____
3 BY REQUEST OF THE COMMISSIONER OF INSURANCE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION
6 33-18-202, MCA, RELATING TO MISREPRESENTATION OF INSURANCE
7 POLICIES."
8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10 Section 1. Section 33-18-202, MCA, is amended to read:
11 "33-18-202. Misrepresentation ~~and false advertising~~ of
12 policies prohibited. No person shall ~~make, issue,~~ issue,
13 circulate, or cause to be made, issued, or circulated any
14 estimate, ~~illustrations,~~ circular, ~~sales presentations,~~
15 ~~omissions, comparisons,~~ or statement misrepresenting the terms
16 of any policy issued or to be issued or which:
17 (1) ~~misrepresents~~ the benefits, or advantages, promised
18 thereby or ~~conditions, or terms of any insurance policy;~~
19 (2) ~~misrepresents~~ the dividends or share of the
20 surplus to be received thereon ~~on any insurance policy;~~
21 ~~(3) make~~ ~~makes~~ any false or misleading statement as
22 to the dividends or share of surplus previously paid on
23 ~~either-policies~~ ~~any insurance policy;~~
24 ~~(3) make~~ ~~any is~~ misleading representation or any is
25 a misrepresentation as to the financial condition of any

1 ~~insurer person~~ or as to the legal reserve system upon which
2 any life insurer operates; or
3 ~~(4)(5)~~ ~~use~~ ~~uses~~ any name or title of any insurance
4 policy or class of ~~insurance~~ policies misrepresenting the
5 true nature thereof;
6 ~~(6) is a misrepresentation for the purpose of~~
7 ~~effecting a pledge or assignment of or effecting a loan~~
8 ~~against any insurance policy; or~~
9 ~~(7) misrepresents any insurance policy as being shares~~
10 ~~of stock."~~

-End-

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INTRODUCED BILL

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 10, 1979

The fifth meeting of the Senate Judiciary Committee was called to order by Chairman Lensink in room 331 at 10:03 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 63:

This bill is an act to amend laws about misrepresentation of insurance policies and was sponsored by Senator Mike Anderson. Senator Anderson introduced Josephine Driscoll, the Chief Deputy Commissioner of Insurance in the Auditor's office.

Ms. Driscoll read a prepared statement. (see attached.) She further stated that the purpose of this bill is to help the consumer, particularly the Medicare patient, etc., in connection with the sale of insurance policies. She introduced Rita Theisen, chief of the legal division, who stated that the word, "omission" was a very important word added to this act. Senator Turnage questioned exactly what is an omission. Ms. Driscoll explained that this meant an omission of pertinent facts, such as an agent that omits to tell a potential customer that he is not from social security, but is representing a specific company selling a specific product. Senator Turnage questioned as to how far the word "omission" goes and how can an insurance carrier possibly put everything into their advertising materials. Ms. Driscoll responded that advertising is not required to be filed with the agency, but one omission that is often made is that the policy does not apply to pre-existing conditions.

The question was brought up as to how a matter is handled now when there are some problems. Ms. Driscoll said that a company is called in for a hearing and there is no action until after such hearing. The hearing is regulated by the Unfair Trade Practices Act. The question was brought up as to what penalties are imposed for violations. Ms. Driscoll replied that the company is either fined or it could lose its license, but in any event the consumer will probably get his money back. She explained that this act is trying to keep the agents on the straight-and-narrow and protect the consumer, particularly in the field of health insurance and the senior citizen.

Senator Lensink asked questions about one particular

mail order insurance company and Ms. Driscoll explained that this particular company was considered to be ethical and that they did not have any agents at all but did all their soliciting from the home office by phone and that they had many satisfied customers in the state of Montana.

There were no further proponents and no opponents. The committee agreed to wait for disposition of this bill.

CONSIDERATION OF SENATE BILL 51:

Senator Brown explained the contents of this bill, which deals with a problem the highway department has concerning sale of land to the original owner of interests in real property held by the Department of Highways. Senator Brown introduced James Beck, who is the Chief R/W Attorney, Legal Division of the Department of Highways.

Mr. Beck explained the problem they have with the excess land that is no longer needed for highways. He explained that they now send a notice of a right to meet the highest bid to the original owner or his successors. He said the problem comes in when the land has been subdivided and there are many adjacent owners.

Senator Lensink questioned as to what type of land parcels they are talking about and Jim Beck explained that this could be land whereby the highway made a loop and there was excess land going straight through, or a highway goes across a corner of a section, or the land is so damaged that it is valueless, or where there may be a gravel pit in the middle of a farmer's field. He stated that they try to sell this land to put it back on the tax rolls.

There was further discussion on the bill. There were no further proponents and no opponents and the committee agreed to hold further action on this bill.

Senator Brown made a motion that the amendment proposed by Jim Beck (see attached copy) be adopted. The motion carried unanimously.

CONSIDERATION OF SENATE BILL 56:

Senator Brown gave an explanation of this bill, which is an act to revise the laws concerning condemnations by the Department of Highways. He introduced James Beck, who is the Chief R/W Attorney, legal Division of the Department of Highways.

Date 1/11/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Joan A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)			
Healy, John E. (Jack) (D)			

Each Day Attach to Minutes.

MONTANA STATE SENATE

Senate Judiciary Committee

Senate Bill No. 63

A BILL FOR AN ACT ENTITLED:

"AN ACT TO AMEND SECTION 33-18-202, MCA,
RELATING TO MISREPRESENTATION OF INSURANCE POLICIES."

The purpose of this amendment is to update Chapter 18 of the Montana Insurance Code, which defines unfair trade practices and provides the Department with a means of enforcing the law in the event violations do occur.

The amendments define more thoroughly and more carefully unfair trade practices by taking into account a wider range of consumer and industry problems.

The amendments deal with a major consumer concern, the misrepresentation and fraud in the advertising and selling of insurance policies, and conforms with the guidelines of the National Association of Insurance Commissioners.

The Commissioner of Insurance finds it necessary, from time to time, to issue regulations with respect to certain practices and enabling legislation for clarification is necessary.

MONTANA INSURANCE DEPARTMENT

BY

Josephine M. Driscoll
Josephine M. Driscoll, CPIW

Chief Deputy Insurance Commissioner

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 11, 1979

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The sixth meeting of the Senate Judiciary Committee was called to order by Everett R. Lensink, Chairman, on the above date in room 331 at 10:04 A.M. Senator Lensink introduced Valencia Lane, who will be the researcher for this committee.

ROLL CALL:

All members were present. Senator Van Valkenburg asked to be excused temporarily.

WITNESSES PRESENT TO TESTIFY:

J. C. Weingartner - State Bar

DISPOSITION OF SENATE BILL 63:

Senator Turnage moved that Senate Bill 63 do pass. The motion carried unanimously.

RECONSIDERATION OF SENATE BILL 51:

Senator Galt stated that he did not like the bill. Senator Turnage said he was bothered about existing condemnations. Senator Turnage moved that Senate Bill 51 do not pass. Senator Brown requested that Senator Turnage withdraw his motion and he will take the matter up with Jim Beck, from the Department of Highways, to see if he can come up with adequate language. Senator Turnage agreed to this and the bill was continued until a later date.

DISPOSITION OF SENATE BILL 41:

Joan Mayer from the Legislative Council gave a handout on the proposed amendments to this bill. Senator Towe moved that we reconsider our action on this bill. Motion passed unanimously.

Senator Turnage moved that the bill be amended as indicated on the handout. The motion passed unanimously.

Senator Turnage moved that the bill do pass as amended. The motion passed unanimously.

RECONSIDERATION OF SENATE BILL 54:

Senator Towe requested that we wait on this bill. He stated that another bill is being drafted and the attorney general has requested that Senator Towe sponsor this new bill. The committee was agreeable.

STANDING COMMITTEE REPORT

January 11, 19 79

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 63

Respectfully report as follows: That SENATE Bill No. 63

DO PASS

P.A.

Representative Kemmis asked, have those statutes, the definition, been challenged in court, and the answer was no.

Representative Keyser asked, how many drugstores refuse to participate in the program because of the paperwork. Mr. McCabe answered that there are three in the state.

REPRESENTATIVE CURTISS: Are there federal rules that apply to this type of thing.

MR MCCABE: They instruct you to have rules to sanction providers, but no specific rules.

Again, Mr. Keyser asked, could you have a list of rules before we have executive action.

There followed discussion about the suspension of payments to nursing homes. Following this the hearing closed on House Bill No. 238.

SENATE BILL NO. 63: Senator Anderson. This bill is concerned with the misrepresentation of insurance companies. I am an insurance agent in private life. This bill deals with false advertising and misrepresentation. A lot of the things that have happened because of Medicare.

JO DRISCOLL: Chief Deputy, Insurance Commissioners Office. The amendments define more thoroughly. We had some hearings recently on a supplement to Medicare. She went on to discuss life insurance solicitation regulation and the omission of telling someone something in cases, especially with older persons, it is very misleading. They must fully disclose.

There was discussion about misrepresentation, following which the hearing closed on Senate Bill 63.

HOUSE BILL NO. 226: Representative Conroy. In 1975 Montana adopted the Uniform Divorce and Marriage Act. This bill provides that a County Attorney may not be appointed counsel for a minor in divorce or guardianship proceedings.

TOM HONZEL: Montana County Attorneys Association. This bill is a response to a Supreme Court case in the adoption of children, a guardianship proceeding. 40-4-205, that section refers to the Uniform Divorce Act. In the past the attorneys fees were assessed against the parents. I don't

January 24, 1979

that in his opinion the bill is unconstitutional. Representatives Keedy and Kemmis stated that the bill would not do what was wanted.

Representative Keedy offered a substitute motion "do not pass". The motion failed. The motion then reverted back "do pass". The motion carried with a roll call vote of 12 to 7.

Yes: Anderson
Conroy
Curtiss
Daily
Holmes
Iverson
Keedy
Keyser
Pavlovich
Seifert
Uhde
Teague

No: Day
Eudaily
Kemmis
Lory
Rosenthal
Roth
Scully

SENATE BILL NO. 63:

unanimous.

Representative Lory moved "be concurred in". The motion carried with the vote

HOUSE BILL NO. 238:

On page 2, line 23. Representative Eudaily moved the amendment and the motion carried with the vote unanimous.

Mr. Weinberg offered a small clean-up amendment for the committee to consider.

Representative Uhde moved on page 2, line 20, to strike "6%" and insert "11%". Representative Lory explained how the amendment would be ineffective because of the wording in an existing law. Representative Uhde then changed his amendment to "the current statutory amount". The motion carried with the vote unanimous.

Representative Scully suggested that the Department be directed to send a statement of intent to the committee. Mr. Weinberg will do so, and discussion and it was agreed by the committee members.

Representative Keyser moved to "pass for the day". The motion carried with the vote unanimous.

HOUSE BILL NO. 242:

Representative Eudaily moved "do pass" and the motion carried with the vote unanimous. Mr. Weinberg has amendments that were overlooked so the bill will be held for reconsideration.

SENATE BILL NO. 63

INTRODUCED BY ANDERSON

BY REQUEST OF THE COMMISSIONER OF INSURANCE

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION
33-18-202, MCA, RELATING TO MISREPRESENTATION OF INSURANCE
POLICIES."

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policies prohibited. No person shall ~~---(1)---~~ make, issue,
circulate, or cause to be made, issued, or circulated any
estimate, illustration, circular, sales presentation,
omission, comparison, or statement ~~misrepresenting the terms~~
~~of any policy issued or to be issued or which~~

(1) misrepresents the benefits, or advantages, promised
thereby or conditions, or terms of any insurance policy;

(2) misrepresents the dividends or share of the
surplus to be received thereon on any insurance policy;

~~(2)(3)~~ (3) make makes any false or misleading statement as
to the dividends or share of surplus previously paid on
~~similar policies~~ any insurance policy;

~~(3)(4)~~ (4) make-any is misleading representation or any is
a misrepresentation as to the financial condition of any

~~insurer person~~ or as to the legal reserve system upon which
any life insurer operates; or

~~(4)(5)~~ use uses any name or title of any insurance
policy or class of insurance policies misrepresenting the
true nature thereof;

(6) is a misrepresentation for the purpose of
effecting a pledge or assignment of or effecting a loan
against any insurance policy; or

(7) misrepresents any insurance policy as being shares
of stock."

-End-